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2008 APR -2 AM 10:47

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RALPH MARTINEZ,
CDCR #V-64613,

Plaintiff,

vs.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

Case No. 08cv0565 BEN (CAB)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY FILING
FEES PURSUANT TO
28 U.S.C. § 1914(a) AND/OR MOVE
TO PROCEED *IN FORMA*
PAUPERIS PURSUANT TO
28 U.S.C. § 1915(a)**

Ralph Martinez ("Plaintiff"), an inmate currently incarcerated at Calipatria State Prison located in Calipatria, California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983.

I.

FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493

1 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).
 2 Prisoners granted leave to proceed IFP however, remain obligated to pay the entire fee in
 3 installments, regardless of whether the action is ultimately dismissed for any reason. *See* 28
 4 U.S.C. § 1915(b)(1) & (2).

5 Here, Plaintiff has neither prepaid the \$350 filing fee required to commence this action,
 6 nor has she submitted a Motion to Proceed IFP. Therefore, this action is subject to immediate
 7 dismissal pursuant to 28 U.S.C. § 1914(a).

8 II.

9 CONCLUSION AND ORDER

10 For the reasons set forth above, the Court hereby:

11 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
 12 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

13 (2) **GRANTS** Plaintiff forty-five (45) days leave from the date this Order is stamped
 14 "Filed" to: (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion
 15 to proceed IFP which includes a certified copy of her trust account statement for the 6-month
 16 period preceding the filing of her Complaint pursuant to 28 U.S.C. § 1915(a)(2).

17 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the
 18 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
 19 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
 20 attached Motion to Proceed IFP within that time, this action shall remain dismissed without
 21 prejudice and without further Order of the Court.

22 **IT IS SO ORDERED.**

23 DATED: 4/2/08

24 
 25 HON. ROGER T. BENITEZ
 26 United States District Judge
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 28